

**LOCAL CRIMINAL RULES OF
PRACTICE
FOR THE COURTS
OF THE 52nd JUDICIAL CIRCUIT
FLOYD COUNTY, INDIANA
Effective: January 20, 2004**

**ORDER ADOPTING LOCAL CRIMINAL RULES OF PRACTICE
FOR THE CIRCUIT, SUPERIOR AND COUNTY COURTS, 52nd
JUDICIAL CIRCUIT, FLOYD COUNTY, INDIANA**

**IT IS HEREBY ORDERED THAT THE FOLLOWING LOCAL CRIMINAL
RULES OF PRACTICE IN THE CIRCUIT, SUPERIOR AND COUNTY COURTS OF
THE 52nd JUDICIAL CIRCUIT, FLOYD COUNTY, INDIANA, BE AND THE SAME
ARE HEREBY ADOPTED, EFFECTIVE January 20, 2004.**

SO ORDERED THIS _____ DAY OF January, 2004.

J. TERRENCE CODY; JUDGE, FLOYD CIRCUIT COURT

RICHARD G. STRIEGEL; JUDGE, FLOYD SUPERIOR COURT

GLENN G. HANCOCK; JUDGE, FLOYD COUNTY COURT

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RULE 1
APPLICABILITY OF RULES

A. SCOPE. The following local criminal rules of practice and procedure shall apply to cases filed in the Circuit, Superior and County Courts of Floyd County, Indiana.

B. EFFECTIVE DATE. These local rules shall be effective January 20, 2004.

C. CITATION. These rules may be cited as Local Criminal Rule _____. The Indiana Rules of Trial Procedure are hereinafter referred to as Trial Rule _____.

D. PURPOSE. These rules are promulgated pursuant to, and are intended to supplement, the Indiana Criminal Rules as adopted by the Indiana Supreme Court.

RULE 2
WITHDRAWAL OF APPEARANCE

A. WITHDRAWAL OF APPEARANCE. An attorney desiring to withdraw his appearance shall file a written motion requesting leave to do so accompanied by a notice of hearing which shall be served upon the defendant directing said person to appear at the hearing, unless incarcerated, in which event the defendant shall be produced in Court for said hearing. The motion must contain the address and phone number of the defendant.

B. WAIVER OF RULE. A motion for leave to withdraw an appearance accompanied by a written appearance of successor counsel and a written consent of the defendant shall constitute a waiver of the requirements of this local rule.

C. TERMINATION OF APPEARANCE. An attorney's representation of a Defendant shall be conclusively presumed to be withdrawn/terminated five (5) days from the expiration of the time within which a Notice of Appeal must be filed.

RULE 3
DUTIES OF ATTORNEYS
PREPARATION OF ENTRIES

A. STATUS OF PROCEEDINGS. The Prosecuting Attorney and each attorney appearing of record shall at all times keep themselves informed of the status of the proceeding and shall be particularly bound by hearing dates orally set by the Court from the bench in their presence.

B. PREPARATION OF ENTRY. When the Prosecuting Attorney or an attorney of record for a defendant has agreed to or has been directed by the Court to prepare an order or entry, such attorney shall place on the last page of the entry appropriate signature lines indicating

"prepared by" and "reviewed by" and shall submit the entry to opposing counsel for examination. Opposing counsel shall promptly examine the entry when submitted, shall sign the entry, and shall submit the entry to the Court within five [5] days of receiving same. If opposing counsel shall fail or refuse to sign or submit the order or entry within five (5) days of receiving same without advising the Court and the preparing attorney as to objections thereto, the preparing attorney shall advise the Court by letter of opposing counsel's failure or refusal to sign or submit such order or entry and submit the same to the Court. The Court shall accept such order or entry without opposing counsel's signature unless after examining the record, the Court determines that the same is erroneous.

C. FLAT FILING. The files of the Clerk of the Court shall be kept under the flat filing system. All pleadings presented for filing with the Clerk or the Court shall be flat and unfolded.

D. PAPER SIZE. Pursuant to Administrative Rule 11, all pleadings, motions, entries, orders, judgments and other papers shall be filed on letter size [8 ½ x 11] paper.

E. PROPOSED ORDERS AND ENTRIES. All proposed orders and entries shall reflect the name of the preparer under the indication "prepared by", shall be submitted in sufficient number for each person entitled to service and shall contain a distribution list identifying by name and address each person entitled to service. The preparer shall provide sufficient pre-stamped pre-addressed envelopes to the court for mailing of the orders or entries.

RULE 4 MOTIONS

A. PROPOSED ORDERS REQUIRED. Proposed orders shall accompany motions in the following matters:

- [1] to enlarge or shorten time
 - [2] for setting of hearing, conference or trial
 - [3] for continuance
 - [4] for reduction of bond
 - [5] for psychiatric examination for competency
 - [6] to compel discovery
 - [7] to withdraw appearance
 - [8] for dismissal or discharge
 - [9] for change of venue
 - [10] for modification of sentence
 - [11] for post-conviction relief
 - [12] for such other orders, judgments or decrees as the Court may direct;
- and shall comply with Local Criminal Rule 3 E.

B. HEARINGS REQUIRED. Excepting motions to correct error, all motions which request a hearing shall be accompanied by a proposed an order scheduling a hearing. The

proposed order shall comply with Local Criminal Rule 3E

C. GENERALLY. Excepting motions made during the course of a recorded proceeding, all motions shall be in writing.

RULE 5
PRE-TRIAL CONFERENCES
OMNIBUS HEARINGS
ASSIGNMENT OF CASES FOR TRIAL

A. COURT CALENDAR. A calendar of cases assigned for bench trial or jury trial shall be kept by the Court and the Court Reporter shall enter on the calendar at the direction of the Court, the style, cause number, and the time and date the trial is assigned to commence. In order to comply with Indiana Criminal Rule 4, the Prosecuting Attorney may submit a motion for trial date setting out the requested trial date which the Court will grant unless a congested calendar exists in which event the next available date shall be the trial date.

B. PRE-TRIAL CONFERENCES AND OMNIBUS HEARINGS.

Pre-trial Conferences. The Court, in its discretion, may require a pre-trial conference on certain cases and, sua sponte, set such cases for conference. Any party or attorney of record desirous of having a pre-trial conference for any case may file a motion requesting same accompanied by a proposed order. All motions which request a hearing shall be accompanied by a proposed order scheduling the hearing. The proposed order shall comply with Local Criminal Rule 3 E.

Omnibus Hearings. Omnibus hearings shall be set by the Court pursuant to the Indiana Statutes. All matters required to be resolved, filed or notices given, and all time limits required to be observed, shall be complied with on or before said date as required by the Indiana Statutes.

C. ATTENDANCE AT PRE-TRIAL CONFERENCE AND OMNIBUS HEARING.

At least one attorney for each defendant who is a member of the Indiana Bar and who will participate in the trial shall appear at the pre-trial conference and omnibus hearing. The defendant must also be present for any pre-trial conference or omnibus hearing in the Circuit, Superior and County Courts. An attorney and a defendant who fails to attend a pre-trial conference or omnibus hearing shall be bound by the trial date set by the Court as well as such other matters determined at the conference or omnibus hearing. A bench warrant may be issued in the discretion of the Court for any defendant who fails to attend a pre-trial or omnibus hearing.

D. REQUESTS FOR BENCH TRIAL. The assignment of a case for bench trial may be had by motion duly filed and accompanied by a proposed order. Said motion shall reflect an estimate of the trial time required.

RULE 6

CONTINUANCES

A. GENERALLY. A motion for continuance of a hearing or trial shall be accompanied by a proposed order which shall contain adequate space for insertion of a new time and date for re-scheduling purposes. The proposed order shall comply with Local Criminal Rule 3 E.

B. CONTENT OF MOTION. A motion for continuance shall set forth the scheduled date, the reason for continuance, the specific length of time the moving party desires the cause to be delayed, and reference as to whether opposing counsel agrees or disagrees to a continuance of the scheduled hearing or trial.

C. TIMING OF MOTION. No continuance shall be granted at the request of a party unless a written motion for same is filed not less than fourteen [14] days prior to the scheduled hearing or trial, unless it is made to appear by affidavit that the facts which are the basis of the motion did not then exist or were not then known by the moving party.

RULE 7

FINDINGS OF FACT

A. PROPOSED FINDINGS. In all cases where findings of fact by the Court are requested or required, counsel of record shall submit to the Court proposed findings setting forth all facts claimed to have been established and the conclusions of law thereon. Such findings shall be submitted to the Court with a copy on computer disc within such time as directed by the Court.

RULE 8

BONDS AND BOND SCHEDULES

A. BOND SCHEDULE. During regular court hours the judge of each court, or magistrate on cases assigned to him in each court, shall determine the bond on all cases filed in that court. The judges of the various courts may, in their discretion, institute and adopt bond schedules. These bond schedules are for the convenience of the court's and sheriff's offices for use after regular court hours. The sheriff's office may assign bonds for any individual arrested based on the nature of the charge per the schedule.

B. EXCEPTIONS. The bond may be changed by the judge of the court providing the bond schedule, and the magistrate on cases assigned to him in such court, at any time for any specific case. Any of the other judges and the magistrate may change a bond on any individual after court hours regardless of which court the individual is charged in, if the bond has not already been reviewed by one of the other judges or magistrate.

C. OTHER CASES. The bond on any case that is not on a bond schedule due to the severity and nature of the offense, may be set by any of the judges and the magistrate after regular court hours. The judges of the courts wherein the case is appropriate to be sent should be contacted first. In the event said judge or judges are unavailable, then a judge of either of the other courts or the magistrate may set the bond. Nevertheless, any judge or the magistrate may assign a bond to any individual case regardless of the offense or where the case will be filed provided none of the other judges or the magistrate have previously reviewed said bond and taken action thereon.

D. TYPES OF BONDS. The following bonds are approved for the courts of Floyd County: Surety, Cash and Ten (10%) percent Bonds posted in the Clerk's Office (Court Cash Bonds).

RULE 9 CASE ASSIGNMENT

A. APPLICATION. In the event a case charges both a felony and a misdemeanor, the case shall be considered a felony for the application of this rule.

B. MISDEMEANORS. All domestic violence misdemeanors shall be filed in the Floyd Circuit and Floyd Superior Courts on a random basis of 1 case in the Circuit Court to 2 cases in the Superior Court. All other misdemeanors are to be filed in the Floyd County Court unless the defendant has a pending case, or is presently on probation, or has a case under advisement, or a case which has been diverted, in the Circuit or Superior Court. In the event of such occurrence, the new charge shall be filed in the respective Court where the defendant is on probation or the other case is pending, under advisement or diverted.

C. FELONIES. All misdemeanors that become D felonies as a result of an enhancement statute based upon the commission of a similar prior offense under the Motor Vehicle Code (such as, a second or subsequent drunken driving offense) shall be filed in the Floyd County Court unless the defendant has a pending case, or is presently on probation, or has a case under advisement, or a case which has been diverted, in the Circuit or Superior Court. In the event of such occurrence, the new charge shall be filed in the respective Court where the defendant is on probation or the other case is pending, under advisement or diverted.

All other D felonies; all A, B and C felonies; and all murder cases shall be filed in the Floyd Circuit Court and the Floyd Superior Court on a random basis at a ratio of one (1) case in Circuit Court to two (2) cases in Superior Court. This ratio is based upon the Circuit Court having exclusive jurisdiction of Juvenile matters. If a defendant has a case pending, under advisement, diverted, or is on probation in the Circuit Court or Superior Court, then a new case involving that defendant shall be filed in that respective court and equalization shall be accomplished by assignment of subsequently filed causes of action to result in the two-to-one ratio.

RULE 10 TRANSFER

A. TRANSFER BETWEEN COURTS. Transfer between the Floyd Circuit Court and the Floyd Superior Court shall be accomplished pursuant to IC 33-5-18.1-13&14, which allows the judges to transfer cases between courts with mutual consent and to sit on any case in either court with mutual consent.

RULE 11 REASSIGNMENT

A. FELONIES. In the event a change of judge is granted or it becomes necessary to assign another judge in any felony proceeding in the Circuit or Superior Court, the case shall be assigned on an alternate basis to the Judge of the Floyd Superior or Circuit Court whichever was not the Court of original filing, and the Judge of the Scott Superior Court, and a Senior Judge.

B. MISDEMEANORS. In the event a change of judge is granted or it becomes necessary to assign another judge in any misdemeanor proceeding in the County Court, the case shall be assigned on an alternate basis to the judge of the Floyd Circuit Court, the judge of the Floyd Superior Court, and one of the judges of the surrounding courts of Harrison Superior, Washington Superior, Clark Superior #3 and a Senior Judge.

RULE 12 WARRANTS

A. RE-ISSUANCE OF WARRANTS. All warrants issued for misdemeanors shall be returned to the issuing court six (6) months from issuance date and shall be reissued at the request of the Prosecuting Attorney. All warrants for felonies shall be returned to the issuing court one (1) year from issuance date. All bench warrants for contempt of court, failure to appear, revocation of probation, etc.; whether felony or misdemeanor, shall be returned to the issuing court one (1) year from issuance date. The court shall then reissue said warrants as it deems necessary.

RULE 13 DEPOSITIONS

A. PUBLICATION. The seal on depositions shall be broken and the deposition deemed published upon filing with the Court. When depositions are utilized, specific reference by page and line or question number to those places in such deposition which purport to demonstrate the presence or absence of material fact shall be provided.

RULE 14

JURY INSTRUCTIONS

A. FORM. Proposed final instructions, special or pattern, shall be submitted double-spaced with all designations including indications for the Court's disposition placed on the bottom three [3] inches of the instruction. The parties shall submit a second set of proposed final instructions containing no designation of who submitted them, or other identifying references, which shall contain only the statement of law. These instructions shall also be presented to the court on computer disc or by e-mail as the Court shall direct.

RULE 15

TRANSCRIPTS

A. COSTS. Costs for a transcript shall be in accordance with the Local Civil Rules. The party requesting a transcript shall obtain an estimate of the cost of the transcript from the Court Reporter and shall pay a deposit equal to one-half of the estimated cost of the transcript before the transcription process is undertaken by the Court Reporter. The remaining estimated cost of the transcript shall be paid upon notification by the Court Reporter to the requesting party that one-half of the transcript has been completed. The actual total cost of the transcript shall be paid in full before the transcript is released to the requesting party. Nevertheless, this provision shall not apply to defendants whom the Court has determined to be indigent and unable to pay for the cost of a transcript.

RULE 16

SANCTIONS

A. COURT ACTION. When a party or counsel for a party fails to comply with any of these Local Criminal Rules, the Court, after advising the party of the noncompliance, may direct the Clerk of the Court to refuse any pleadings or papers filed in non-compliance with these rules; or, if inadvertently accepted for filing, direct that such pleadings or papers be stricken from the record; or take whatever other appropriate action deemed necessary.